

No. 13-1156 PO

¹ All references to “CSR” are to the Missouri Code of State Regulations, as current with amendments included in the Missouri Register through the most recent update.

summary decision, he has also failed to raise a genuine issue as to the facts the Director established in his motion. 1 CSR 15-3.446(6)(B).

Accordingly, the findings of fact are based on the allegations contained in the complaint and the documents submitted with the Director's motion for summary decision: the Director's affidavit of Day's licensure and certified copies of criminal records. The following findings of fact are undisputed.

Findings of Fact

1. Day holds a peace officer license issued by the Director that has been current and active since June 25, 2008.
2. On April 16, 2013, Day pled guilty to sexual misconduct in the first degree, a Class A misdemeanor under § 566.090,² in connection with conduct that occurred during June, July, and August of 2008.
3. Day was sentenced to one year in the Audrain County jail, but the court suspended the execution of his sentence in favor of two years' supervised probation, registration as a sex offender, attending a treatment program, and 60 days' house arrest.

Conclusions of Law

We have jurisdiction to hear this case. Section 590.080.2. The Director has the burden of proving by a preponderance of the evidence that Day has committed an act for which the law allows discipline. *See Kerwin v. Mo. Dental Bd.*, 375 S.W.3d 219, 229-230 (Mo. App. W.D. 2012)(dental licensing board demonstrates "cause" to discipline by showing preponderance of evidence). A preponderance of the evidence is evidence showing, as a whole, that "the fact to be proved [is] more probable than not." *Id.* at 230 (*quoting State Bd. of Nursing v. Berry*, 32 S.W.3d 638, 642 (Mo. App. W.D. 2000)).

² Statutory citations are to the RSMo Supp. 2012 unless otherwise indicated.

The Director alleges that there is cause for discipline under § 590.080:

1. The director shall have cause to discipline any peace officer licensee who:

* * *

(2) Has committed any criminal offense, whether or not a criminal charge has been filed[.]

Day pled guilty to first degree sexual misconduct, a Class A misdemeanor. A misdemeanor is a crime. Section 556.016, RSMo 2000. A conviction resulting from a guilty plea collaterally estops the issue of whether the person committed the criminal offense. *Carr v. Holt*, 134 S.W.3d 647, 649 (Mo. App., E.D. 2004) (citing *James v. Paul*, 49 S.W.3d 678, 682-83 (Mo. banc 2001)). Day committed a criminal offense, and he is subject to discipline under § 590.080.1(2).

Summary

There is cause for discipline under § 590.080.1(2). We cancel the hearing.

SO ORDERED on October 7, 2013.

/s/ Karen A. Winn
KAREN A. WINN
Commissioner